

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4005 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KRISHNA OIL MILL

Versus

STATE OF GUJARAT

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Appearance:

MR AD MITHANI for Petitioners

MR HL JANI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/96

ORAL JUDGMENT

Heard learned counsel for the parties and perused the Special Civil Application.

2. Challenge has been made by the petitioners, in this Special Civil Application, to the order of the District Supplies Officer, Amreli, dated 6th August 1983 passed under Section 6A of the Essential Commodities Act, 1955, under which, for contravention of the provisions of

the Essential Commodities (Stock Declaration and Licence Control) Order, 1981, 50 oil tins and 2500 Kgs. Groundnut stock was ordered to be confiscated, though 194 tins of oil and 7612 Kgs. of Groundnut stock was seized. The next order which is challenged by the petitioner in this Special Civil Application is the order of the Appellate Authority dated 24th January 1984, under which, the appeal filed by the petitioner against the aforesaid order of District Supplies Officer, Amreli, has been dismissed.

3. The Appellate Authority, under its order dated 24th January 1984, has given out irregularities, which were noticed at the establishment of the petitioner:

- (1) The stock of 16 bags of ground nuts received in the said mill on 7.3.83 though weighed as 5544 Kgs., the same had not been shown in the stock register on the date of inspection.
- (2) On the date of inspection, the rate/stock board was not placed in the mill.
- (3) Till 10.45 hours of the date of inspection i.e. 8.3.83, the stock register upto previous day (7.3.83) had not been completed, that means the income of ground nuts received on 7.3.83 is required to be taken on the stock register at the most by next day morning before commencing the business, which has not been complied with.
- (4) The fortnightly statement required to be furnished to the Supplies Officer is not being submitted in prescribed form No.G.
- (5) In the stock register entries relating to 12.2.83 and 3.3.83, over-writings/re-writings have been observed.

The Appellate Authority has considered the matter extensively and whatever point which has been raised by the petitioner, has been considered. The irregularity that the petitioner has not entered in the Stock Register 5544 Kgs. of Groundnut is a serious thing and the explanation which has been given for this lapse has not been accepted by both the authorities and rightly so. The authority has rightly held that the defence raised is nothing but only concocted and manufactured. The defence of the nature that the aforesaid Groundnut was only lying there as a sample and sale was not completed and as such, it was not required to be entered in the stock register, is on the face of it in the facts and circumstances of

the case, is a manufactured defence. Moreover, this non entry of certain quantity of Groundnut in the stock register becomes more serious when another irregularity has been found in the petitioner's establishment and that irregularity is of over writing/re writing in the stock register relating to the entries of 12.2.83 and 3.3.83. This irregularity itself is very serious.

4. The learned counsel for the petitioner has put much emphasis on the affidavit of one Shri Patel Madhubhai Haribhai and contended that the said unaccounted quantity of Groundnut belonged to the said person and he put that at the establishment of the petitioner as a sample and the sale had not taken place. But after going through the contents of the said affidavit, I am satisfied that it is an evidence which has been created by the petitioner and which has been given by the said person to favour him. It is significant to notice here that Shri Patel Madhubhai Haribhai has very conveniently avoided to state in the affidavit from where he got that much quantity of Groundnut. It is not case of that person in the affidavit that it was agricultural produce of his own or he has purchased it from some party from elsewhere. On the other hand, this affidavit goes against the petitioner, which fully establishes that in the petitioner's shop, unaccounted and unstocked Groundnut was there on the day on which the shop was inspected. Even if it is taken to be correct for the sake of argument that the sale was not materialized, then too, it was obligatory on the part of the petitioner to enter the same in the stock register as stock for sample. No explanation has been given out why such entry has not been made. If the petitioner was really a bonafide person as he has tried to canvas, then such entry should have been made which admittedly has not been done. When unaccounted and unstocked Groundnut was found in the premises of the petitioner, naturally that was the only possible defence which could have been canvassed and which in fact has been done. It is a case where both the authorities have considered the matter liberally. All the grounds raised by the petitioner have been dealt with. The authorities below have taken a lenient view in the matter looking at the gravity of contravention made by the petitioner of the relevant orders issued under the provisions of Essential Commodities Act, i.e. Essential Commodities (Stock Declaration and Licence Control) Order, 1981. Looking to the facts which have come on record, the confiscation which has been ordered is for much less than the quantity of oil and Groundnut which should have been done. I do not find any perversity in

the orders of both the authorities below. There are number of contraventions made by the petitioner of the relevant orders and all have been held to be committed by the petitioner by the authorities below. The legislature has not provided any appeal or revision against the orders passed by the Appellate Authority under Section 6C of the Essential Commodities Act, 1955 and the intention of legislature is very clear, i.e., to give finality to the decision of Appellate Authority. This Court, sitting under Article 227 of the Constitution of India, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty or flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes, which is not the case here. The learned counsel for the petitioner has tried to make submission as if this Court is sitting as Appellate Authority over the decision of the respondent. This Court will not enter in the arena of discussion and appreciate all evidence nor it will go on the question whether the evidence produced was sufficient or not. This Court can only interfere, sitting under Articles 226 or 227 of the Constitution of India where it finds orders to be perverse or orders which could not have been made by a person of wisdom or prudence on the basis of material which has been brought on record. The petitioner has committed grave and serious irregularities and the provisions of the order framed under the Essential Commodities Act, 1955, have been contravened. Confiscation of oil and Groundnut is also of much less in quantity than what it should have been. The authorities have taken a lenient view while passing the order of confiscation. Taking into consideration the totality of the facts of the case, I do not find any substance in this Special Civil Application and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.2,000/- by way of costs of this petition to the State of Gujarat. The Secretary of the Department concerned is directed to deposit this amount of costs in one of the relief funds maintained by the Hon'ble Chief Minister of the State for natural calamities.

5. It is a case where the amount, i.e. the cost of oil and Groundnut confiscated has been detained by the petitioner for all these years, though under the interim order of this Court. The petitioner is a businessman and he has and should have utilised that money for his business and earning. The petitioner cannot be allowed to take unjust enrichment only because interim relief has been granted. For all these years this amount could not

be utilised by the Government or the Government has been denied use of this amount which ultimately has resulted in gains to the petitioner. In view of this fact, the petitioner is further directed to pay interest on the amount at the rate of 18% p.a. from the date of interim relief granted by this Court till the aforesaid amount is deposited by the petitioner with the respondent.

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(sunil)